

SENATE BILL NO. 118

INTRODUCED BY WHEAT

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT; PROVIDING DEFINITIONS; PROHIBITING EMPLOYMENT DISCRIMINATION BASED ON MEMBERSHIP IN THE STATE'S ORGANIZED MILITIA; CLARIFYING AND UPDATING PROVISIONS AUTHORIZING LEAVES OF ABSENCE FOR ORGANIZED MILITIA MEMBERS AND THE RIGHT OF MEMBERS TO RETURN TO EMPLOYMENT WITHOUT LOSS OF SPECIFIED BENEFITS; CLARIFYING AND UPDATING MILITARY LEAVE PROVISIONS FOR ELECTED OFFICIALS; PROVIDING FOR ENFORCEMENT BY SPECIFYING COMPLAINT PROCEDURES, INFORMAL RESOLUTION, AND COURT REMEDIES; SPECIFYING THE DUTIES AND POWERS OF THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY AND THE STATE ATTORNEY GENERAL WITH RESPECT TO COMPLAINTS; PROVIDING RULEMAKING AUTHORITY; REVISING PROVISIONS RELATED TO PAID MILITARY LEAVE FOR PUBLIC EMPLOYEES; UPDATING MILITARY LEAVE PROVISIONS RELATED TO DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 2-16-112, 2-16-501, 7-4-2208, 10-1-604, 10-1-615, 19-2-707, 39-51-1214, AND 39-51-2302, MCA; ~~AND~~ REPEALING SECTIONS 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226, 10-2-227, AND 10-2-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~47~~ 18] may be cited as the "Montana Military Service Employment Rights Act".

NEW SECTION. SECTION 2. PURPOSE -- LEGISLATIVE INTENT. THE PURPOSE OF [SECTIONS 1 THROUGH 18] IS TO RECOGNIZE THE IMPORTANCE OF THE SERVICE PERFORMED BY MONTANA NATIONAL GUARD MEMBERS AND TO PROTECT THE EMPLOYMENT RIGHTS OF NATIONAL GUARD MEMBERS WHO MAY BE CALLED TO STATE ACTIVE DUTY WHEN THERE IS A STATE EMERGENCY OR DISASTER. THE LEGISLATURE ALSO SUPPORTS THE EFFORTS AND SACRIFICES OF THE EMPLOYERS OF MONTANA NATIONAL GUARD MEMBERS AND INTENDS THAT [SECTIONS 1 THROUGH 18] WILL PROVIDE A

1 MEANS FOR NATIONAL GUARD MEMBERS AND EMPLOYERS TO WORK COOPERATIVELY TO RESOLVE ANY WORKPLACE
2 ISSUES.

3
4 NEW SECTION. Section 3. Definitions. Unless the context requires otherwise, as used in [sections
5 1 through 47 18], the following definitions apply:

6 (1) "Department" means the department of labor and industry established in 2-15-1701.

7 (2) "Elected official" means an official in DULY ELECTED OR APPOINTED TO any state or local judicial,
8 legislative, or executive ELECTIVE office ~~filled by a vote of people~~ of the state, A district, or ~~appropriate A~~ political
9 subdivision of the state, INCLUDING A SCHOOL DISTRICT OR ANY OTHER LOCAL DISTRICT.

10 (3) (a) "Employer" means any public or private person or entity providing employment in Montana.

11 (b) The term does not include the United States.

12 (4) "Federally funded ~~active~~ MILITARY duty" means duty, including training, performed pursuant to orders
13 issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed
14 physician's certification to recover from an illness or injury incurred while performing the ~~active~~ duty.

15 (5) "Member" means a member of the state's organized militia provided for in 10-1-103.

16 (6) "Military service" includes both federally funded ~~active~~ MILITARY duty and state active duty.

17 (7) (a) "State active duty" means duty performed by a member when a disaster or an emergency has
18 been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution
19 to include the time period, if any, required pursuant to a licensed physician's certification to recover from an
20 illness or injury incurred while performing the active duty.

21 (b) The term does not include federally funded ~~active~~ MILITARY duty.

22
23 NEW SECTION. Section 4. Rights under federal law. A person ordered to federally funded ~~active~~
24 MILITARY duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the
25 federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq., and
26 other applicable federal law.

27
28 NEW SECTION. Section 5. Prohibition against employment discrimination. An employer may not
29 deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct,
30 injure, discriminate against, or threaten negative consequences against a person with regard to employment

1 because of the person's membership, application for membership, or potential application for membership in
2 the state organized militia or because the person may exercise or has exercised a right or may claim or has
3 claimed a benefit under [sections 1 through 47 18].

4
5 **NEW SECTION. Section 6. Entitlement to leave of absence.** (1) A member ordered to state active
6 duty is entitled to a leave of absence from the person's employment during the period of that state active duty.

7 (2) A leave of absence for state active duty may not be deducted from any sick leave, vacation leave,
8 military leave, or other leave accrued by the member unless the member desires the deduction.

9
10 **NEW SECTION. Section 7. Right to return to employment without loss of benefits -- exceptions**
11 **-- definition.** (1) ~~Except as provided in subsection (2)~~ SUBJECT TO THE PROVISIONS OF THIS SECTION, after a leave
12 of absence for state active duty, a member is entitled to return to employment with the same seniority, status,
13 pay, health insurance, pension, and other benefits as the member would have accrued if the member had not
14 been absent for the state active duty.

15 (2) (a) If a member was a probationary employee when ordered to state active duty, the employer may
16 require the member to resume the member's probationary period from the date when the member's leave of
17 absence for state active duty began.

18 (b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation
19 leave, military leave, or other leave benefits during the member's leave of absence for state active duty.
20 However, the member may not be provided with lesser leave accrual benefits than are provided to all other
21 employees of the employer in a similar but nonmilitary leave status.

22 ~~(c) An employer shall allow a member serving on state active duty to either continue to make the~~
23 ~~contributions to health, pension, or other benefit plans required to continue the member's coverage under those~~
24 ~~benefit plans during the member's absence or to resume coverage under those plans once the member returns.~~

25 (C) (I) AN EMPLOYER'S HEALTH PLAN MUST PROVIDE THAT:

26 (A) A MEMBER MAY ELECT TO NOT REMAIN COVERED UNDER THE EMPLOYER'S HEALTH PLAN WHILE THE MEMBER
27 IS ON STATE ACTIVE DUTY BUT THAT WHEN THE MEMBER RETURNS, THE MEMBER MAY RESUME COVERAGE UNDER THE
28 PLAN WITHOUT THE PLAN CONSIDERING THE EMPLOYEE TO HAVE INCURRED A BREAK IN SERVICE; AND

29 (B) A MEMBER MAY ELECT TO REMAIN ON THE EMPLOYER'S HEALTH PLAN WHILE THE MEMBER IS ON STATE ACTIVE
30 DUTY WITHOUT BEING REQUIRED TO PAY MORE THAN THE REGULAR EMPLOYEE SHARE OF THE PREMIUM, EXCEPT AS

1 PROVIDED IN SUBSECTION (2)(C)(II):

2 (II) IF A MEMBER'S STATE ACTIVE DUTY QUALIFIES THE MEMBER FOR COVERAGE UNDER THE STATE OF MONTANA'S
3 HEALTH INSURANCE PLAN AS AN EMPLOYEE OF THE DEPARTMENT OF MILITARY AFFAIRS, THE EMPLOYER'S HEALTH PLAN
4 MAY REQUIRE THE MEMBER TO PAY UP TO 102% OF THE FULL PREMIUM FOR CONTINUED COVERAGE.

5 (III) A HEALTH INSURANCE PLAN COVERING AN EMPLOYEE WHO IS A MEMBER SERVING ON STATE ACTIVE DUTY
6 IS NOT REQUIRED TO COVER ANY ILLNESS OR INJURY CAUSED OR AGGRAVATED BY STATE ACTIVE DUTY.

7 (IV) IF THE MEMBER IS A STATE EMPLOYEE PRIOR TO BEING ORDERED TO STATE ACTIVE DUTY, THE MEMBER DOES
8 NOT BECOME QUALIFIED AS A DEPARTMENT EMPLOYEE AN EMPLOYEE OF THE DEPARTMENT OF MILITARY AFFAIRS FOR THE
9 PURPOSES OF HEALTH PLAN COVERAGE UNTIL THE MEMBER'S STATE ACTIVE DUTY QUALIFIES THE MEMBER TO BE
10 CONSIDERED A DEPARTMENT EMPLOYEE AN EMPLOYEE OF THE DEPARTMENT OF MILITARY AFFAIRS PURSUANT TO
11 2-18-701.

12 (D) AN EMPLOYER'S PENSION PLAN MUST PROVIDE THAT WHEN A MEMBER RETURNS TO EMPLOYMENT FROM
13 STATE ACTIVE DUTY:

14 (I) THE MEMBER'S PERIOD OF STATE ACTIVE DUTY MAY CONSTITUTE SERVICE WITH THE EMPLOYER OR
15 EMPLOYERS MAINTAINING THE PLAN FOR THE PURPOSES OF DETERMINING THE NONFORFEITABILITY OF THE MEMBER'S
16 ACCRUED BENEFITS AND FOR THE PURPOSES OF DETERMINING THE ACCRUAL OF BENEFITS UNDER THE PLAN; AND

17 (II) IF THE MEMBER ELECTS TO RECEIVE CREDIT AND MAKES THE CONTRIBUTIONS REQUIRED TO ACCRUE THE
18 PENSION BENEFITS THAT THE MEMBER WOULD HAVE ACCRUED IF THE MEMBER HAD NOT BEEN ABSENT FOR THE STATE
19 ACTIVE DUTY, THEN THE EMPLOYER SHALL PAY THE AMOUNT OF THE EMPLOYER CONTRIBUTION THAT WOULD HAVE BEEN
20 MADE FOR THE MEMBER IF THE MEMBER HAD NOT BEEN ABSENT.

21 ~~(d)~~(E) An employer is not obligated to allow the member to return to employment after the member's
22 absence for state active duty if:

23 (i) the member is no longer qualified to perform the duties of the position, subject to the provisions of
24 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

25 (ii) the member's position was temporary and the temporary employment period has expired;

26 (iii) the member's request to return to employment was not done in a timely manner;

27 (iv) the employer's circumstances have changed so significantly that the member's continued
28 employment with the employer cannot reasonably be expected; or

29 (v) the member's return to employment would cause the employer an undue hardship.

30 (3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner"

1 means:

2 (i) for state active duty of up to 30 days, the member returned to employment the next regular work shift
3 following safe travel time plus 8 hours;

4 (ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of
5 termination of state active duty; and

6 (iii) for state active duty of more than 180 days, the member returned to employment within 90 days of
7 termination of the state active duty.

8 (b) If there are extenuating circumstances that preclude the member from returning to employment
9 within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this
10 section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202.

11

12 **NEW SECTION. Section 8. Leave of absence for elected officials -- restoration to office.** (1) If an
13 elected official is ordered to military service, the official is entitled to a leave of absence ~~without pay~~ for the
14 duration of the military service.

15 (2) An elected official's leave of absence pursuant to this section does not create a vacancy in office
16 or require the official to forfeit the office.

17 (3) IF AN ACTING OFFICIAL IS APPOINTED PURSUANT TO [SECTION 9], THE LEAVE OF ABSENCE MUST BE WITHOUT
18 PAY.

19 (4) AN ELECTED OFFICIAL ORDERED TO MILITARY SERVICE IS ENTITLED TO THE EMPLOYMENT RIGHTS AND
20 BENEFITS THAT WOULD BE PROVIDED TO ANY OTHER EMPLOYEE UNDER THE OFFICIAL'S EMPLOYER IF THE EMPLOYEE WERE
21 ON A LEAVE OF ABSENCE SUBJECT TO THE PROVISIONS OF [SECTIONS 1 THROUGH 18].

22 ~~(3)(5)~~ (5) Upon returning from a leave of absence for military service, an IF AN ACTING OFFICIAL WAS
23 APPOINTED PURSUANT TO [SECTION 9], THE RETURNING elected official is entitled to be immediately restored to office
24 for the official's unexpired term ~~without loss of benefits~~ IMMEDIATELY UPON THE OFFICIAL'S REQUEST AFTER BEING
25 RELEASED FROM THE MILITARY SERVICE.

26

27 **NEW SECTION. Section 9. Appointment of acting elected officials.** (1) When an elected official is
28 ~~on a leave of absence for~~ ORDERED TO military service, an acting ~~elected~~ official ~~may~~ MUST be appointed as
29 provided in this section IF:

30 (A) THE ELECTED OFFICIAL IS PRECLUDED PURSUANT TO FEDERAL LAW FROM PERFORMING THE OFFICIAL DUTIES

1 OF THE OFFICE; OR

2 (B) THE ELECTED OFFICIAL REQUESTS THE APPOINTMENT OF AN ACTING OFFICIAL.

3 (2) IF AN ACTING OFFICIAL IS APPOINTED, THE ACTING OFFICIAL SHALL TAKE ANY OATH OF OFFICE REQUIRED TO
4 ASSUME THE OFFICE, SHALL EXERCISE ALL THE RIGHTS, POWERS, AND DUTIES VESTED IN THE OFFICE, AND MUST BE
5 PROVIDED WITH ALL THE EMPLOYMENT RIGHTS AND BENEFITS ASSOCIATED WITH THE POSITION UNTIL THE ELECTED
6 OFFICIAL IS RESTORED TO OFFICE PURSUANT TO [SECTION 8(5)] OR THE ELECTED OFFICIAL'S TERM EXPIRES, WHICHEVER
7 OCCURS FIRST.

8 ~~(2)(3)~~ (a) The governor shall appoint the acting ~~elected~~ official for any office elected by the state at large
9 and for the office of district judge, public service commissioner, or any other elected regional or district office of
10 the state.

11 (b) An acting official for a legislative district must be appointed ~~as provided~~ USING THE PROCEDURES in
12 5-2-402.

13 (c) The board of county commissioners shall appoint the acting ~~elected~~ official for any elected office of
14 a county.

15 (d) The city or town council shall appoint the acting ~~elected~~ official for any elected office of a city or town.

16 ~~(3)(4)~~ For any elected office not covered under subsection ~~(2)~~ (3), the governing body shall determine
17 the method by which an acting ~~elected~~ official may be appointed pursuant to this section.

18 ~~(4)(5)~~ An appointment of an acting ~~elected~~ official pursuant to this section must be made for a period
19 not to exceed the unexpired term for the office and subject to the right of the elected official to be restored to the
20 office upon returning from the military service, as provided in [section ~~7~~ 8(5)].

21
22 NEW SECTION. Section 10. Procedure for filing a complaint. (1) A person entitled to rights or
23 benefits under [sections 1 through ~~47~~ 18] and who claims that an employer has failed or is about to fail to comply
24 with the provisions of [sections 1 through ~~47~~ 18] may file a complaint with the department as provided in this
25 section.

26 (2) A complaint under this section must be:

27 (a) filed within 15 days after the member discovered the actions or practice alleged to constitute an
28 employer's failure or imminent failure to comply with the provisions of [sections 1 through ~~47~~ 18]; and

29 (b) submitted in writing to the department in a manner prescribed by the department.

30 (3) The department shall, upon request, provide technical assistance to a person wishing to file a

1 complaint pursuant to this section.

2
3 **NEW SECTION. Section 11. Assistance, investigation, and enforcement of complaints.** (1) The
4 department shall provide assistance to any person with respect to the employment rights and benefits to which
5 the person is entitled pursuant to [sections 1 through 47 18]. The department may request the assistance of
6 federal or state agencies engaged in similar or related activities and utilize the assistance of volunteers.

7 (2) The department shall investigate each complaint submitted pursuant to [section 9 10]. The
8 department shall initiate the investigation within 30 days of receiving the complaint. Within 60 days of receiving
9 the complaint, the department shall make a finding about whether a violation of rights or benefits provided in
10 [sections 1 through 47 18] has occurred or is about to occur and shall notify the complainant AND THE EMPLOYER
11 IN WRITING of the finding.

12 (3) If the department's investigation finds that a violation of [sections 1 through 47 18] has occurred or
13 is about to occur, the department shall attempt to resolve the matter by making a reasonable effort, including
14 conference, conciliation, and persuasion, to provide redress to the complainant and ensure that the employer
15 named in the complaint complies with the provisions of [sections 1 through 47 18].

16 (4) If the department fails to resolve the matter within 90 days of receiving the complaint, the department
17 shall notify the complainant of the complainant's right to request that the department refer the complaint to the
18 state attorney general under the provisions of [section 42 13].

19
20 **NEW SECTION. Section 12. Enforcement and investigative powers of the department.** To carry
21 out its enforcement and investigative duties under [sections 1 through 47 18], the department has the power to:

22 (1) enter and inspect the places, question the employees, and investigate the facts, conditions, or
23 matters that the department considers appropriate to determine whether an employer has violated or is about
24 to violate the provisions of [sections 1 through 47 18] or that will aid the department in the enforcement of the
25 provisions of this part; and

26 (2) administer oaths, examine witnesses, issue subpoenas, compel the attendance of witnesses, inspect
27 papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits
28 relevant to the department's duties under [sections 1 through 47 18].

29
30 **NEW SECTION. Section 13. Referral of complaint to state attorney general.** (1) A complaint that

could not be successfully resolved pursuant to [section 40 11] must be referred by the department to the state attorney general if the complainant requests the referral pursuant to [section 40(4) 11(4)].

(2) (a) Except as provided in subsection (2)(b), if the state attorney general is satisfied that the complaint has merit, the state attorney general may file a lawsuit on behalf of and act as an attorney for the complainant in seeking relief for the complainant.

(b) (i) Except as provided in subsection (2)(b)(ii), if the complaint is against a state agency, as defined in 2-15-102, notwithstanding an arrangement for the provision of legal services to the agency by the department of justice, the agency shall provide or obtain counsel for the agency.

(ii) If the complaint is against the department of justice, the department of administration, notwithstanding an arrangement for the provision of legal services to the department of administration by the department of justice, shall provide or obtain counsel for the department of justice.

(3) If the state attorney general sues pursuant to this section, fees or court costs may not be assessed against the complainant.

NEW SECTION. Section 14. Independent lawsuit not precluded -- exhaustion of administrative remedies. Nothing in [sections 1 through 47 18] may be construed as infringing on a person's right to file an independent lawsuit to seek relief as a private party from an alleged violation of [sections 1 through 47 18]. However, if a person files a complaint with the department as provided in [section 9 10], the person must have exhausted the administrative remedies available under [section 40 11] before having standing to initiate an independent lawsuit.

NEW SECTION. Section 15. Jurisdiction -- venue -- standing -- respondent -- time limit -- expedited hearing. In any lawsuit initiated pursuant to [sections 1 through 47 18]:

(1) the lawsuit must be brought in the district court in the county ~~where the claimant resides or where the alleged violation occurred~~ IN WHICH THE CLAIMANT'S EMPLOYER MAINTAINS A PLACE OF BUSINESS;

(2) the lawsuit may be initiated only by a person claiming a right or benefit under [sections 1 through 47 18] or by the state attorney general as provided in [section 42 13];

(3) only an employer may be a necessary party respondent;

(4) the lawsuit must be commenced within 3 years of when the claimant can reasonably be expected to have discovered the facts constituting a violation of the claimant's rights or benefits pursuant to [sections 1

1 through ~~47 18~~; and

2 (5) the court shall order a speedy hearing and shall advance the case on the court's calendar.

3
4 **NEW SECTION. Section 16. Court remedies.** (1) In a lawsuit initiated pursuant to [sections 1 through
5 ~~47 18~~], the court may provide one or more of the following remedies:

6 (a) require the employer to comply with the provisions of [sections 1 through ~~47 18~~];

7 (b) require the employer to compensate the complainant for losses suffered by the complainant because
8 of the employer's violation; or

9 (c) if the court finds that the employer's violation was ~~willful~~ DONE WILLFULLY, AS DEFINED IN 1-1-204,
10 require the employer to pay compensation UNDER SUBSECTION (1)(B) as liquidated damages ~~for the losses~~
11 ~~suffered by the complainant because of the violation.~~

12 (2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the
13 complainant. ~~However, if the employer is the prevailing party, the court may not award attorney fees or assess~~
14 ~~on the complainant any fines, fees, or court costs.~~

15 (3) The court may use its full equity powers, including temporary or permanent injunctions, temporary
16 restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under [sections 1
17 through ~~47 18~~].

18
19 **NEW SECTION. Section 17. Special revenue account for payment to claimants.** (1) There is an
20 account in the state special revenue fund to the credit of the department of justice for the payment of
21 compensation awarded by a court pursuant to [section ~~45 16~~].

22 (2) In a lawsuit by the state attorney general under [section ~~42 13~~], if paid compensation or liquidated
23 damages are awarded, the money awarded must be deposited in the state special revenue account and be paid
24 from the account directly to the complainant on order of the state attorney general.

25 (3) If payment cannot be made to a complainant within 3 years, the payment must be forwarded to the
26 Montana department of revenue and classified as unclaimed property subject to the provisions of Title 70,
27 chapter 9, part 8.

28
29 **NEW SECTION. Section 18. Rulemaking authority.** The department and the department of justice
30 may adopt rules to implement the provisions of [sections 1 through ~~47 18~~].

1

2 **Section 19.** Section 2-16-112, MCA, is amended to read:

3 **"2-16-112. Absence from the state.** ~~No~~ Except as provided in [section 7 8], an officer mentioned in
4 2-16-111(1) ~~and no or an~~ officer appointed by the governor and confirmed by the senate ~~must~~ may not be absent
5 ~~himself~~ from the state for more than 60 consecutive days unless ~~upon~~ on business of the state or with the
6 consent of the legislature."

7

8 **Section 20.** Section 2-16-501, MCA, is amended to read:

9 **"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the following
10 events before the expiration of the term of the incumbent:

11 (1) the death of the incumbent;

12 (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental
13 disorder and is in need of commitment;

14 (3) resignation of the incumbent;

15 (4) removal of the incumbent from office;

16 (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city,
17 county, town, or township for which the incumbent was chosen or appointed or within which the duties of the
18 incumbent's office are required to be discharged;

19 (6) except as provided in [section 7 8], absence of the incumbent from the state, without the permission
20 of the legislature, beyond the period allowed by law;

21 (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3
22 consecutive months, except when prevented by sickness, ~~or~~ when absent from the state by permission of the
23 legislature, or as provided in [section 7 8];

24 (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of
25 the incumbent's official duties;

26 (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time
27 prescribed;

28 (10) the decision of a competent tribunal declaring void the incumbent's election or appointment."

29

30 **Section 21.** Section 7-4-2208, MCA, is amended to read:

1 **"7-4-2208. Absence of county officers from state.** (1) ~~Except as provided in~~ Subject to subsection
2 (2) ~~and except as provided in [section 7 8], if a county officer must in no case is absent himself from the state~~
3 for a period of more than 60 days ~~and or for no a~~ or for no a period longer than 15 days without the consent of the board
4 of county commissioners, ~~and if he does so absent himself, he~~ the officer forfeits his the office.

5 (2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with
6 the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized
7 and accredited law enforcement training school without effecting forfeiture of their offices."

8
9 ~~Section 21. Section 10-1-604, MCA, is amended to read:~~

10 ~~"10-1-604. Leave of absence of Paid leave for public employees attending training camp or~~
11 ~~similar training program. A state, city, town, or county employee who is a member of the organized militia of~~
12 ~~this state or who is a member of the organized or unorganized reserve corps or military forces of the United~~
13 ~~States and who has been an employee for a period of at least 6 months shall must be given leave of absence~~
14 ~~with pay for a period of time not to exceed 15 working days in a calendar year for attending regular~~
15 ~~encampments, training cruises, and similar training programs of the organized militia or of the military forces of~~
16 ~~the United States military service. This leave may not be charged against the employee's annual vacation time."~~

17
18 **SECTION 22. SECTION 10-1-604, MCA, IS AMENDED TO READ:**

19 **"10-1-604. Leave of absence of Paid military leave for public employees attending training camp**
20 **or similar training program. (1) A state, city, town, or county employee who is a member of the organized**
21 **militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the**
22 **United States and who has been an employee for a period of at least 6 months shall must be given leave of**
23 **absence with pay for a period of time not to exceed accruing at a rate of 15 working days in a calendar year for**
24 **attending regular encampments, training cruises, and similar training programs of the organized militia or of the**
25 **military forces of the United States performing military service.**

26 (2) This Military leave may not be charged against the employee's annual vacation time.

27 (3) Unused military leave must be carried over to the next calendar year, but may not exceed a total
28 of 30 days in any calendar year."

29
30 **Section 23. Section 10-1-615, MCA, is amended to read:**

1 **"10-1-615. Misdemeanor violations.** A person who violates ~~10-1-603~~, 10-1-613; or 10-1-614 is guilty
2 of a misdemeanor."

3
4 **SECTION 24. SECTION 19-2-707, MCA, IS AMENDED TO READ:**

5 **"19-2-707. Qualified military service.** Notwithstanding any other provision of state law governing a
6 retirement system, contributions, benefits, and service credit for qualified military service are governed by section
7 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment
8 Rights Act of 1994. Contributions, benefits, and service credit for state active duty are governed by the Montana
9 Military Service Employment Rights Act provided in [sections 1 through 18]."

10
11 **Section 25.** Section 39-51-1214, MCA, is amended to read:

12 **"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except
13 for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period
14 employers. The benefit charged must be based on the percentage of wages paid by the employer as compared
15 to the total wages paid by all employers in the claimant's base period.

16 (2) A charge may not be made to the account of a covered employer with respect to benefits paid under
17 the following situations:

18 (a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered
19 employer or who had been discharged for misconduct in connection with services;

20 (b) if paid in accordance with the extended benefit program triggered by either national or state
21 indicators;

22 (c) if the base period employer continues to provide employment with no reduction in hours or wages;

23 (d) if benefits are paid to claimants who are in training approved under 39-51-2307; or

24 (e) if the base period employer is ordered to ~~state or federal active duty in the national guard or reserves~~
25 military service, as defined in [section 2 3]."

26
27 **Section 26.** Section 39-51-2302, MCA, is amended to read:

28 **"39-51-2302. Disqualification for leaving work without good cause.** (1) An individual must be
29 disqualified for benefits if the individual has left work without good cause attributable to the individual's
30 employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons; or

(c) employment because of being ~~called~~ ordered to active military duty to serve in the United States armed forces service, as defined in [section 2 3], for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the active military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

NEW SECTION. Section 27. Repealer. Sections 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226, 10-2-227, and 10-2-228, MCA, are repealed.

NEW SECTION. Section 28. Instructions to code commissioner. Section 10-1-604 is intended to be renumbered and codified as an integral part of [sections 1 through 47 18], and the provisions of [sections 1 through 47 18] apply to section 10-1-604.

NEW SECTION. Section 29. Codification instruction. [Sections 1 through 47 18] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 47 18].

1

2 NEW SECTION. SECTION 30. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

3 - END -